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PRESIDING OFFICER'S
RULING NO. MC96-3/36

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications

Docket No. MC96-3

PRESIDING OFFICER'S RULING ON
MOTION TO COMPEL RESPONSES TO
INTERROGATORIES DFC/USPS-1-6

(December 27, 1996)

A Douglas F. Carlson Motion to Compel Responses to Interrogatories to United States Postal Service (DFC/USPS-1-6) (Motion) was mailed to the Commission on December 9, 1996, and received by the Commission on December 16, 1996. I accepted the motion and set December 23, 1996 as the date for responses. Tr. 10/3625. The Postal Service submitted a timely Answer In Opposition to Motion of Douglas F. Carlson to Compel Responses to Interrogatories DFC/USPS-1-6 (Answer).

The Motion seeks responses to discovery requests filed on November 14, 1996. The procedural schedule ended discovery on the Postal Service direct case on August 12; however, pursuant to Special Rule 2.E. it allows for discovery directed to the Postal Service for the purpose of obtaining information available only from the Postal Service until November 15, 1996. See Presiding Officer's Ruling MC96-3/3, Attachment A, Attachment B at 4 (Special Rule 2.E.). The Postal Service objects to providing responses



these six discovery requests, claiming that they are not the type of requests permitted by Special Rule 2.E. It supports its argument with reference to past Commission practice, and particularly to Presiding Officer Rulings in Docket No. R87-1, Answer at 3-4. See also P.O. Ruling MC96-3/21, cited in Objection of United States Postal Service to Interrogatories of Douglas F. Carlson (DFC/USPS-1-6) at 1.

The Postal Service correctly states that Special Rule 2.E. applies for the limited purpose of allowing parties to develop evidence for submission as rebuttal to the direct cases of participants other than the Postal Service. Discovery for the purpose of developing evidence for submission as rebuttal to the direct case of the Postal Service is generally to be completed before oral cross-examination of Postal Service witnesses. In this case, discovery concerning the direct case of the Postal Service was to be completed August 12, 1996, and evidence in rebuttal to the direct case of the Postal Service was to be filed September 25, 1996. P.O. Ruling MC96-3/3, Attachment A. Discovery filed on the Postal Service after August 12, is limited to timely follow-up questions and inquiries related to rebutting the direct presentations of other participants.

None of the six interrogatories DFC/USPS-1-6 meet this standard. Therefore, the Motion is denied.

The Motion indicates that Mr. Carlson believes that interrogatories for the purpose of clarifying the record on issues raised in participant direct evidence are permissible, regardless of whether that information is being sought for the purpose of developing rebuttal to that

evidence. Motion at 3. Special Rule 2.E. provides an exception to the standard that discovery ends prior to receipt of the participant's case. It is limited to when a participant needs data available only from the Postal Service in order to prepare testimony to rebut participants other than the Postal Service.

While the Postal Service correctly cites the purpose and application of Special Rule 2.E., I do not agree with its characterization of the arguments contained in the Motion. Because Mr. Carlson has not participated before this Commission previously, it is understandable that the limited scope of Special Rule 2.E. may have been unclear to him. Thus, I consider the arguments presented in the Motion neither "patently disingenuous" nor "pretextual." See Answer at 4 and 6.

Interrogatories DFC/USPS-1-4 concern the costs and procedures for manufacturing postal cards. These questions properly could have been asked during the initial phase of discovery on the Postal Service. The Motion does not explain how answers to these requests might be used to prepare evidence to rebut the evidence presented by the Office of the Consumer Advocate, the only other participant offering evidence concerning postal cards. Therefore, even though these questions seek information which might have relevance, they are not within the ambit of discovery permissible under Special Rule 2.E.

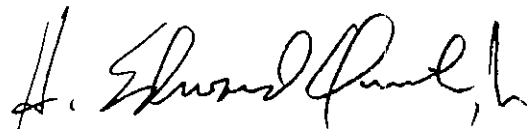
The Motion also does not indicate how the information sought in DFC/USPS-5 might lead to evidence to rebut a participant other than the Postal Service. Interrogatory DFC/USPS-5 is essentially follow-up to the Response of

United States Postal Service to Request for Admission of Douglas F. Carlson number 3. The Postal Service answered this request for admission on October 25, 1996. Follow-up discovery requests must be served within seven days of receipt of the answer to the previous question. Special Rule 2.D. While the answer the Service provided to Carlson Request for Admission number 3 does appear to be inconsistent with the material attached to the answer to DBP/USPS-T1-3, Mr. Carlson's attempt to obtain clarification of this topic is no longer timely.

The Postal Service advises that Mr. Carlson agreed to withdraw his request to compel a response to DFC/USPS-6 if witness Lyons provided a responsive answer to DFC/USPS-T1-1. The Postal Service has filed a response to that interrogatory which appears to be responsive. Therefore, I will not direct the Postal Service to respond to DFC/USPS-6.

RULING

The Douglas F. Carlson Motion to Compel Responses to Interrogatories to United States Postal Service (DFC/USPS-1-6) is denied.



H. Edward Quick, Jr.
Presiding Officer